IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1886 of 2004

in

SPECIAL CIVIL APPLICATION No 6083 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH Sd/-
and
HON'BLE MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 to 5 NO

SATISHBHAI NANUBHAI PATEL

Versus

DEPUTY EXECUTIVE ENGINEER

Appearance:

1. LETTERS PATENT APPEAL No. 1886 of 2004

MRS SANGEETA N PAHWA for Appellant No.

MR AY KOGJE AGP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and

HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 15/12/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.H.WAGHELA)

Invoking Clause 15 of the Letters Patent, the appellant has challenged the order of the learned Single Judge by which his petition praying for salary and benefits in accordance with the Resolution dated 17.10.1988 of the State Government was rejected. The appellant appears to have approached this Court with a grievance that the aforesaid Resolution dated 17.10.1988 was applicable in the facts of his case and he was discriminated against insofar as other employees in similar situation were being paid approximately Rs.4,390/- per month in comparison to the appellant who was paid salary at the rate of 2,390/- per month.

2. The relevant facts in brief are that the appellant was appointed as a daily wager with effect from 21.12.1984 and was discharged from service on 10.8.1988. Upon raising an industrial dispute and obtaining an order of reinstatement with 50% backwages, he was reinstated in October 1999. In the meantime, the Resolution dated 17.10.1988 of the State Government had come into force, according to which, several benefits, including higher pay, were required to be allowed to daily-rated employees upon completion of 5/10/15 and 20 years of service. The appellant appears to have been denied that benefit only on the ground that he had not completed five years of service on 1.10.1988 and the subsequent service on the same post was immaterial. Adopting that view, the learned Single Judge rejected the petition.

3. The learned counsel for the appellant submitted that the Resolution dated 17.10.1988 was not restricted in its application to the cases where the employee concerned was in service on 1.10.1988 and had completed minimum 5 years of service on that date. It was submitted that, as and when an employee on daily wages completed the required number of years of service, the Resolution was to be applied and the benefits thereunder were required to be paid to the employee concerned. A clarification in that regard appears to have been subsequently issued by the Government itself, according to which, the Resolution was expressly a policy decision and, therefore, as and when an employee concerned fulfilled the condition of completing 5/10 years, he would be entitled to the benefits thereunder. The factum

of such clarification by the Government itself was not disputed by the learned Assistant Government Pleader.

4. In view of the above clarification and reading of the Resolution dated 17.10.1988, it would have been necessary and incumbent upon the respondent to allow the benefits of the said Resolution to the appellant as soon as he completed five years of continuous service as envisaged in the Resolution. It would be necessary to clarify here that the period during which the appellant was not in service due to his termination on 10.8.1988 will have to be considered as a part of continuous service in view of the order of reinstatement, which is admittedly not challenged. The arrears shall, however, have to be computed on the basis of the percentage of backwages awarded by the Labour Court while granting the relief of reinstatement.

5. The learned Assistant Government Pleader, relying upon an affidavit placed on record today, submitted that the appellant has filed other proceedings in the form of recovery application on the same subject-matter resulting into multiplicity of litigation; to which the learned counsel for the appellant responded with the statement that all other proceedings on the same subject-matter shall be withdrawn by the appellant within a period of 15 days without inviting any order on merits or as to costs.

6. Accordingly, the appeal is allowed, the impugned order of the learned Single Judge is set aside and it is directed that the respondent shall pay the difference of salary and all other benefits to the appellant under the Resolution No.WCE/1588(5)(1)M.2 dated 17.10.1988 of the State of Gujarat (Department of Roads & Buildings) on the basis that he had entered into service on 21.12.1984 and continued thereafter. The arrears payable to the appellant pursuant to this order shall be calculated on the aforesaid basis of percentage of backwages for the period during which the petitioner was not actually in service and shall be paid to the appellant within a period of two months from the date of receipt of the writ of this Court and a copy of the calculation shall also be furnished to the appellant. No costs.

Sd/-

(M.S. Shah, J.)

Sd/-

(D.H.Waghela,J.)

(KMG Thilake)